

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

WIDEVINE TECHNOLOGIES, INC.,

Plaintiff and

Counterclaim Defendant,

v.

VERIMATRIX, INC.,

Defendant and

Counterclaimant.

Case No. 2:07-cv-00321 TJW-CE

**DEFENDANT AND COUNTERCLAIMANT VERIMATRIX, INC.'S**  
**SURREPLY BRIEF IN SUPPORT OF MOTION TO STAY LITIGATION PENDING**  
**INTER PARTES REEXAMINATION**

**ORAL ARGUMENT REQUESTED**

***INTER PARTES REEXAMINATION HAS BEEN GRANTED.***

On June 23, 2008, the USPTO granted Verimatrix's *inter partes* reexamination petition of the '175 patent-in-suit as to all of the claims 1 through 94. The USPTO's Order is submitted herewith as Exhibit A. As set forth in Verimatrix's original motion, *inter partes* reexamination involving both parties is the most effective means for resolution of patent invalidity over litigation, and particularly in view of the USPTO's Order, this action should be stayed pending that reexamination. Denying the stay will prejudice the parties and the Court by forcing concurrent litigation of issues to be rendered moot by reexamination. This case continues to be in the initial stage. Discovery Order exchanges under paragraphs 3(b), (c) and (d) have been continued to July 15, 2008. Claim construction exchanges have not started, the *Markman* hearing is scheduled for late 2009 and trial is scheduled for early 2010.

Further, on May 20, 2008, Widevine amended its complaint to add claims based on U.S. Patent 7,376,831, which issued from a continuation of the application for the '175 patent. The claims of '831 are similar to the '175 patent, and Verimatrix will seek reexamination of the '831 patent for common reasons.

To address any concern about the length of the stay and status of the reexamination, Verimatrix proposes that the Court stay the case and then issue an order to reconsider the stay after twelve months based on progress reports provided every sixty days by the parties.

Dated: June 30, 2008

Respectfully Submitted,

SIEBMAN, REYNOLDS, BURG, PHILLIPS &  
SMITH, LLP

/s/ Michael C. Smith

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VERIMATRIX, INC.

**CERTIFICATE OF SERVICE**

The undersign certifies that all counsel of record who consented to electronic service were served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3)(A). All other counsel of record were be served by facsimile transmission or first class mail on June 30, 2008.

/s/ Michael C. Smith

Michael C. Smith